COURT OF THE UNITED STATES.

No. 217.

THE UNITED STATES, APPELLANTS,

vs.

ARMAND PELLERIN ET AL.

APPEAL FROM THE DISTRICT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

	Original.	Print.
Petition of plaintiffs - - - - - - - -	1	2
Citation and marshal's return - - - - - - -	4	4
Answer of defendants - - - - - - - -	5	4
Entry of record: submission of cause - - - - - -	6	5
Evidence offered by plaintiffs—		
1st. Deposition of La. Boligny in relation to heirship - -	7	5
2d. Concession par Jean Jacques Blaise Dabbadie à M. de Pellerin, 2d Juliet, 1764 - - - - - -	9	6
Close of evidence—		
Entry of record: judgment for plaintiffs engrossed and signed, June 12th, 1849 - - - - -	11	7
Do Order of appeal - - - - -	13	9
Finis—		
Clerk's and judge's certificates - - - - - - -	15	9
Citation of appeal and return - - - - - - -	16	10

GIDEON, Printer.

United States of America, eastern district of Louisiana.
district court, sitting in chancery.

ARMAND PELLERIN et al.
vs.
THE UNITED STATES. } Land cause. No. 137.

Be it known and remembered, that heretofore, at the May term, A. D. 1846, of the said court, to wit, on the 16th day of June of said year, Armand Pellerin et al., plaintiffs in the above entitled cause, came by their attorneys, Messrs. Janin, Preaux, and St. Paul, into the office of the clerk of said court, and there filed their petition, which is in the words and figures following, viz:

Petition, filed June 16th, 1846.

To the honorable the judge of the United States district court for the district of Louisiana:

The joint petition of 1 Armand Pellerin, 2 Eliza Pellerin, wife of Louis Esperier, by him assisted; 3 Josephine Pellerin, wife of J. A. Fontenette, by him assisted; 4 Damartin Pellerin, 5 Eugene Pellerin, 6 Annie Pellerin, widow of J. Deprelong; 7 Adolphe Pellerin, 8 Valsin Pellerin, 9 Alexander Pellerin, 10 Amelie Pellerin, wife of Michaud, by him assisted; 11 Elmira Pellerin, wife of J. B. Lamothe; 12 Damartin Pellerin, [13] Lucien Pellerin, 14 Alexander Judice, 15 Joseph Judice, 16 Charles Judice, 17 Henry Judice, 18 Alzin Delahoussaye, wife of Maurice Decuir, by him assisted; 19 Maria Delahoussaye, 20 Octave Delahoussaye, 21 Daguesseau Delahoussaye, 22 Chevalier Delahoussaye, 23 Octave Delahoussaye, 24 Louis Delahoussaye, 25 Balthazar Delahoussaye, 26 Terence Delahoussaye, 27 Theogene Delahoussaye, 28 Gustave Harry, 29, Tonton Harry, wife of Wm. Dees; 30 Wm. Dees, jr., 31 Robert Dees, 32 Josephine Pellerin, wife of Hypolite Boyer, and 33 Celeste Pellerin, widow of the late Jacques Fontenette—all residing in the State of Louisiana:

Humbly shewing, that they are the heirs at law of the late Louis Pellerin, who departed this life in the city of New Orleans some time towards the year 1820. Petitioners further shew, that on the 2d day of July, 1764, the said ancestor, then a resident of the said province of Louisiana, did obtain from Monsieur J. Dabadie, commissary general of the marine and commandant for the King of France of the province of Louisiana, the grant of a certain tract of land in the county of Opelousas, said land being a prairie of a league and a half in depth southwest and northeast, and three-quarters of a league southeast and northwest front; said land being more fully and accurately described on the original plat thereof, which will be in due *term* presented to this court.

Petitioners further shew, that in the year 1816 the original grant and

...sio-
...Land ... Louisiana, (see
... Peoples, pu... vol. 3, page 200,) under the names
... Collins, Luke Collins, and John Collins, who pretended
to be the rightful owners of one portion thereof; and that, notwithstanding the duly filed protest of these petitioners, or part of them, for the benefit of all, and the total absence of any deed, title, or document from the original grantee, showing that he had ever in any legal manner parted with his rights of ownership or any part of said grant, the then commissioners did undertake, and actually undertook, to decide on a conflicting claim, for the decision whereof they had no powers, and finally adjudged part of the land contained in the above concession to the said Theophilus, Luke, and John Collins.

Petitioners show, that they intend to claim in the tribunals of their State the possession of the lands thus confirmed to the said Collins, and make us claim for the same in the present petition.

That however a part only of the said original grant was claimed by and confirmed to the said Collins.

That by the report of said commissioners, above alluded to, it appears that the validity of the original grant was fully recognised; that the petitioners, intending to avail themselves of the provisions of the act of Congress approved June 17th, 1844, entitled "An act to provide for the adjustment of land claims, &c., &c.," and now claim the confirmation of so much of said grant as was not confirmed to the said Collins.

Petitioners are not aware, and do not believe, that any person claims under adverse titles, or are in possession, without the consent or permission of petitioners, of any portion of that part of said grant of which they now claim the confirmation.

Wherefore, the petitioners pray that the United States of America, through their U. S. district attorney, for the district of Louisiana, be cited; that the aforesaid claim of petitioners be declared valid and confirmed; that thereafter the surveyor general for the State of Louisiana be ordered to survey said land, and to designate on the plat of survey the portions of said grant confirmed to the said Collins as aforesaid, and also any part of said land which may have been sold or otherwise disposed of by the United States.

That the petitioners may be permitted to enter of the lands so sold or disposed of by the United States an equal quantity of lands in any land office of the United States, for the State of Louisiana.

And the petitioners pray for their costs, and for such other and further relief as the nature of this case may require.

LOUIS JANIN,
ROBERT PREAUX,
HENRY ST. PAUL,
Of Council.

Per (sig'd) HENRY ST. PAUL,
Attorney.

United States of America, eastern district of Louisiana. [illegible] district court, sitting in chancery.

ARMAND PELLERIN et al.
vs.
THE UNITED STATES. } Land cause. No. 137.

Be it known and remembered, that heretofore, at the May term, A. D. 1846, of the said court, to wit, on the 16th day of June of said year, Armand Pellerin et al., plaintiffs in the above entitled cause, came by their attorneys, Messrs. Janin, Preaux, and St. Paul, into the office of the clerk of said court, and there filed their petition, which is in the words and figures following, viz:

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To the honorable the judge of the United States district court for the district of Louisiana:

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Humbly shewing, that they are the heirs at law of the late Louis Pellerin, who departed this life in the city of New Orleans some time towards the year 1820. Petitioners further shew, that on the 2d day of July, 1764, the said ancestor, then a resident of the said province of Louisiana, did obtain from Monsieur J. Dabadie, commissary general of the marine and commandant for the King of France of the province of Louisiana, the grant of a certain tract of land in the county of Opelousas, said land being a prairie of a league and a half in depth southwest and northeast, and three-quarters of a league southeast and northwest front; said land being more fully and accurately described on the original plat thereof, which will be in due *term* presented to this court.

Petitioners further shew, that in the year 1816 the original grant and

...missioners of Land claims in the State of Louisiana, (see ... Papers, published by Gales & Seaton, vol. 3, page 200,) under the names of Theophilus Collins, Luke Collins, and John Collins, who pretended to be the rightful owners of one portion thereof; and that, notwithstanding the duly filed protest of these petitioners, or part of them, for the benefit of all, and the total absence of any deed, title, or document from the original grantee, showing that he had ever in any legal manner parted with his rights of ownership or any part of said grant, the then commissioners did undertake, and actually undertook, to decide on a conflicting claim, for the decision whereof they had no powers, and finally adjudged part of the land contained in the above concession to the said Theophilus, Luke, and John Collins.

Petitioners show, that they intend to claim in the tribunals of their State the possession of the lands thus confirmed to the said Collins, and make us claim for the same in the present petition.

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Wherefore, the petitioners pray that the United States of America, through their U. S. district attorney, for the district of Louisiana, be cited; that the aforesaid claim of petitioners be declared valid and confirmed; that thereafter the surveyor general for the State of Louisiana be ordered to survey said land, and to designate on the plat of survey the portions of said grant confirmed to the said Collins as aforesaid, and also any part of said land which may have been sold or otherwise disposed of by the United States.

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And the petitioners pray for their costs, and for such other and further relief as the nature of this case may require.

LOUIS JANIN,
ROBERT PREAUX,
HENRY ST. PAUL,
Of Council.

Per (sig'd) HENRY ST. PAUL,
Attorney.

A. D. 1846, [illegible]

Citation.

United States district court, sitting in and for the district of Louisiana, to the marshal for the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon S. W. Downs, United States attorney, to appear before the honorable judge of the district court of the United States, sitting in and for the district of Louisiana, at a district court to be holden at New Orleans, on the first Monday of August, 1846, then and there to answer a petition in chancery filed against the United States, wherein Armand Pellerin and others are petitioners, and the United States are defendants. Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable T. H. McCaleb, judge, this 20th day of June, New Orleans, 1846, and 70th year of American independence.

(Signed) L. E. SIMONDS,
Deputy Clerk.

Mem.—The defendants *is* to enter an appearance in the above cause in the clerk's office, on or before the first Monday of August, 1846, otherwise the petition may be taken pro confesso.

Whereon was afterwards duly registered, according to law, the following

Marshal's return.

Received this 22d day of June, 1846, and on the same day I served copies of the within citation, plaintiff's petition, and documents annexed, on the within named S. W. Downs, esquire, United States attorney, in the manner following, to wit, in person at New Orleans, and made this return June 22d, 1846.

For WM. F. WAGNER,
U. S. Marshal.

(Signed) J. H. RINEHART,
D'y U. S. Marshal.

And further, at the same term, to wit, on the 11th day of November, A. D. 1846, appeared the defendants, by their attorney, and filed the following

Answer.

In the district court of the United States, for the district of Louisiana.

PELLERIN
vs.
THE UNITED STATES.

The answer of the United States, the defendants in the above named

hence dismissed, and that

(Signed) THOMAS J. DURANT,
Attorney U. S.

And afterwards, at the May term, A. D. 1849, of the said court, to wit, on the 22d day of May, of said year, was entered of record on the minutes the following order:

A. PELLERIN et al.
vs.
THE UNITED STATES. } No. 137.

On motion of M. Taylor, esq., of counsel for the complainants in the above cause, it is ordered, that said complainants have leave to amend their petition.

And further, at the same term, to wit, on the 30th day of May, A. D. 1849, was entered of record the following order of submission, viz.:

A. PELLERIN et al.
vs.
THE UNITED STATES. } No. 137.

This cause having been called up for hearing by virtue of and in furtherance of the general order entered at the opening of this term, was, by consent of parties, submitted to the court on the documents and evidence of record.

And be it remembered, that the documents of record, and offered as evidence in this cause are the following:

1*st. Deposition of Ls. Bouligny in relation to heirship.*

U. S. district court.

A. PELLERIN et al.
vs.
THE UNITED STATES. } No. 137.

Clerk's office, N. O., May 29th, 1849.

Testimony taken by consent of parties before Robt. M. Lusher, deputy commissioner in land causes.

Present, Miles Taylor, esq., for plaintiffs; Thos. J. Durant, esq., on behalf of defendants.

Louis Bouligny, esq., a witness for the plaintiffs in the above cause, being sworn, deposes, that he knew old Louis Pellerin by name; he now has two daughters living who are known to witness; Mad. Veuve Fontenette, (2d mun'cy) and Mad. Veuve Boyer, residing in St. Martins. The Louis Pellerin who died in 1820 was known to witness; he was between 50 and 60 years of age; he was the son of the Louis Pellerin, a French officer, to whom the concession was made; witness

was [illegible]
stated by name.

On examining the petition[illegible] the witness states that he is acquainted with the following:

Alex. de la Houssaye, Maria de la Houssaye, Octave de la Houssaye, Daguesseau de la Houssaye, Chevalier de la Houssaye, Louis de la Houssaye, Balthazar de la Houssaye, Térence de la Houssaye, Joséphine Pellerin, épouse de Mr. Boyer, and Céleste Pellerin, veuve de Jacques Fontenette, who are all descendants of old Louis Pellerin.

The head of this family came to Louisiana under the French Government, and the said family have always resided in Louisiana.

The attorney for the U. S. present, propounds no cross questions.

(Signed) L. BOULIGNY,
(Signed) ROBT. M. LUSHER,
Deputy commissioner in land causes.

The foregoing I certify to be the true and exact deposition of Louis Bouligny, esq., faithfully translated by me from the French, and reduced to writing, read over aloud to the witness and by him signed in my presence.

Witness hereto my hand this 29th May, 1849.

(Signed) ROBT. M. LUSHER,
Deputy Commissioner, La.

2o. *Concession par Jean Jacques Blaise Dabbadie à M. de Pellerin, 2 Juillet*, 1764.

Land office, southeastern district of Louisiana.

Jean Jacques Blaise Dabbadie, directeur général, commandant pour le roi à la Louisiane.

Sur la demande que M. Pellerin, officier reformé des troupes de cette colonie nous a faite de lui concéder une prairie, située au quartier des Oppelousas, ayant soixante trois arpens de face, sud est et nord est, ainsi que d'autres terres où sont des cannes et des bois, le tout mentionné en la requête de l'autre part, et suivant le plan qui en a été fait, ci joint visé de nous, et sur, il a formé un établissement qu'il a nommé St. Marthe. Nous, en vertu du pouvoir à nous donné par sa Majesté, et vû l'exposé en la ditte requête, avons concédé et concédons par les présentes au dit Pellerin, les dittes prairies et terres telles qu'elles sont expliqués ci dessus, bien entendu qu'elles se trouvent en dedans des limites qui pourraient avoir été fixées des possessions Françaises et Espagnoles dans cette partie, auquel cas il pourra ainsi que ses hoirs ou ayant cause, en jouir et disposer à l'avenir en toute propriété et usufruit comme de chose à lui appartenant, sous le dit nom de St. Marthe, aux conditions qu'il y continuera le dit établissement, et que sous un an de ce jour il les mettra en valeur et rapport, à défaut de quoi le dit tems passé, elles seront remises au domaine, de sa Majesté qui pourra en disposer comme si la présente concession n'avait pas été accordée, et à la

[illegible] suite
[illegible] pour sa
[illegible] pour construction des forts,
[illegible], et autres ouvrages qu'elle a ordonné ou ordonnera à l'avenir même pour le radoub et carène de ses vaisseaux toutefois et quantes il en sera besoin; ainsi que le terrain nécessaire pour chemins royaux et fortifications, quant aux aires de vent qui doivent limiter les dites prairies et autres terres, ils seront reglés par des bornes qu'on plantera à cet effet, dont on donnera procès-verbal qui sera annexé aux présentes après qu'elles auront été régistrées à notre régistre de concession.

Donné à la Nouvelle Orléans, sous le sceau de nos armes et le contre seing de notre secretaire, le deux Juillet, mil sept cent soixante quatre.

Signé, DABBADIE.
Contresigné, DUVERGE.

Register's office, New Orleans, Louisiana.

I, Louis St. Martin, register of the land office, at New Orleans, La., do hereby certify the foregoing concession to be a true copy from the original one, recorded in one of the records of my office, entitled "Libro 1o., French and Spanish Concessions."

In faith whereof I hereunto subscribe my name, this 10th day of May, A. D. 1849.

Signed, L. ST. MARTIN, *Register.*

Close of evidence.

And afterwards, at the term, to wit, on the eleventh day of June, A. D. 1849, was rendered and recorded on the minutes of the court the following

Judgment,

which was duly engrossed and signed on the twelfth day of June, 1849, viz:

Monday, June 11th, 1849. Present, hon. Theo. H. McCaleb.

ARMAND PELLERIN et al. vs. THE UNITED STATES. } No. 137.

This case came on to be heard at the present term, to wit, on the 30th May last past, upon the petition and answer and evidence adduced by the parties, and was thereupon submitted to the court.

And the court having maturely considered the same, and being satisfied from the evidence that on the 2d of July, 1764, Jean Jacques Blaise Babbadie, director general and commandant for the King of France of the province of Louisiana, having full power and authority so to do, did grant to M. Pellerin, then a resident of the said province of Louisiana, a prairie situated in Opelousas, having sixty-three arpents front southeast and northwest, as well as other landing adjoining, with a growth of cane and wood upon it as described in the requête on which

the [illegible]
said grant the [illegible]
of St. Martha; and being [illegible]
in favor of Theophile Collins, Luke Collins, and John Collins, [illegible]
No. 25, in the report made by commissioners duly appointed under authority of an act of Congress, in the western district of Louisiana, on the 6th of April, 1815, of a portion of the land comprised within the said grant, that the condition therein was fulfilled:

And being further satisfied that the petitioners are the heirs and legal representatives of the said Pellerin, and being further satisfied that the said grant was and is a good and valid grant from the French Government, and that the same is protected by the treaty made between the United States and the French Republic on the 30th of April, 1803, as well as by the laws of nations and the Constitution and laws of the United States, and might have been perfected into a complete title under and in conformity to the laws, usages, and customs of the Governments of France and Spain, had not the sovereignty of the country been transferred to the United States:

This court, acting under and by virtue of the act of Congress of the 26th of May, 1824, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims;" and also an act approved on the 17th June, 1844, entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the 31st degree of north latitude, and between the Mississippi and Perdido rivers," doth order, adjudge, and decree, and it is hereby ordered, adjudged, and decreed, that the petitioners, the heirs and legal representatives of the said Pellerin, are the true and legal owners of the tract of land granted as aforesaid by the French Government to the said Pellerin in Opelousas, having sixty-three arpents front southeast and northwest, together with other lands adjusted and grown in cane and wood, with such extent and boundaries as are described and represented in the said grant or requête on which the same was made, and the plat accompanying, with the exception of and excluding therefrom the portion of land comprised in the said grant, confirmed as aforesaid under No. 25, to Theophilus Collins, Luke Collins, and John Collins.

It is further ordered, adjudged, and decreed, that in case said lands so claimed by the said plaintiffs in their petition, or any part or portion thereof, shall have been sold by the United States, or otherwise disposed of, or if the same shall not have been heretofore located, said plaintiffs shall be and are hereby authorized to enter in any land office of the State of Louisiana, in parcels conformable to sectional divisions and subdivisions, a like quantity of public lands after the same shall have been offered at public sale.

Judgment rendered June 11th, 1849; judgment signed June 12th, 1849. (Signed) THEO. H. McCALEB. [SEAL.]

Order of appeal.

PELLERIN et al.
vs.
THE UNITED STATES. } No. 137.

On motion of Logan Hunton, attorney of the United States for the eastern district of Louisiana, and of Thomas J. Durant, on the same behalf, and on giving the court to understand and be informed that the United States are injured and aggrieved by the judgment of this honorable court, rendered against them at this term in the matter of Pellerin and others versus the United States, and desire to appeal therefrom:

It is thereupon ordered by the court, that an appeal be allowed in favor of the United States from the judgment aforesaid, returnable to the Supreme Court of the United States at the next term thereof after the date of this order.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

I, Needler R. Jennings, clerk of the district court of the United States, sitting at New Orleans, in and for said district, do hereby certify, that the foregoing thirteen and a half folios of manuscript contain and form a true, faithful, correct, and complete transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain cause in chancery, wherein Armand Pellerin et al. are plaintiffs, and the United States are defendants, No. 137 of the land docket of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this twentieth day of
[L. S.] September, one thousand eight hundred and forty-nine, and the 74th year of American independence.

N. R. JENNINGS,
Clerk U. S. district court, eastern district of Louisiana.

I, Theodore H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana, do certify, that N. R. Jennings, who subscribed the above certificate, was at the time of signing the same, and is now, the duly appointed and legally authorized clerk of said court; that full faith and credit are due and ought to be given to all his attestations as such clerk, and that his above certificate is in due form of law.

In witness whereof I hereunto set my hand and seal, this 24th day of September, A. D. 1849.

THEO. H. McCALEB. [SEAL.]